MUHAMMAD NUR AZHAR HASHIM

v.

PENTADBIR TANAH DAERAH HULU LANGAT & ORS.

HIGH COURT MALAYA, SHAH ALAM
WAN YAHYA J
[CIVIL APPEAL NO. 21-197-1991]
15 AUGUST 1991

LAND LAW: *Charge - Order for sale - Alleged irregularity of auction sale - Application for an interim order.*

LAND LAW: *Allegation of irregularity relates to the quantum of discretionary power held by the administrator - Whether discretion exercised judiciously - Failure to withhold sale - Whether inherent jurusdiction of the Court need be invoked - Conduct of the sale not shown to be irregular or unlawful - Sections 417, 418 National Land Code 1965.*

This is an oral *ex parte* application made in Chambers on 2 August 1991 by which the applicant sought for an interim order to stay all pending proceedings in respect of charged land which had already been sold to a successful bidder at an auction held on 1 August 1991 pursuant to an order made under s. 263 of the NLC. The application for the invocation of the inherent power of the Court to stop all proceedings is founded on an alleged irregularity of the auction sale.

Firstly it was contended that the Land Administrator was wrong in fixing the reserve price at RM244,000 when the latest valuation produced by the applicant had shown a much higher valuation. As a second point of contention it was also submitted that the Land Administrator should have exercised his power to postpone the sale when a letter containing such a request was sent to him by the chargee.

Held:

[1] The applicant had failed to show any irregularity on the part of the Land Administrator. It is particularly significant in this case to note that no allegation was made as to the Administrator's failure to hold an enquiry under s. 262 of the NLC and neither was it suggested that the applicant had objected to his decision to fix the reserve price at RM244,000. In the absence of such averment, such procedure under ss. 262 & 263 had been complied with.

[2] The mere fact that the applicant had turned up to produce a report at a subsequent date showing a valuation in excess of the one fixed at the enquiry, does not to my mind negate the former valuation nor does it impose an obligation or clothe the administrator with the power to alter the order made under s. 257(d) of the NLC.

[3] The second allegation of irregularity relates to the Administrator's power under s. 264(3) of the NLC. This power is clearly discretionary. Discretion, however must be exercised judiciously. In this instance the alleged impropriety of the administrator is his refusal to restrain the sale pursuant to a letter written by the chargee dated 31 July 91. No reason was given for such ungracious written command. A negative answer to an attempt to call off the sale at the eleventh hour for no apparent good reason does not, to my mind,constitute an acceptable ground for saying that the had acted injudiciously.

[4] Consequently even going on the assumption that inherent jurisdiction is available to stop proceedings of this nature and at this stage the circumstances of this particular application do not in my opinion warrant any such interference by the Court as the conduct of the sale by the Land Administrator has not been shown to be in any way irregular or unlawful.

[No order given on this application.]

Legislation referred to:
National Land Code 1965, ss. 256, 257, 257(1)(d), 258, 262, 263, 264(3)

For the applicant - Muhammad Nor Azmi bin Hashim; M/s. Bakar, Khalil & Partners

JUDGMENT

Wan Yahya J:

By an oral *ex parte* application made in chambers on 2 August 1991 the applicant herein sought for an interim order to stay all pending proceedings in respect of charged land which had already been sold to a successful bidder at an auction held on 1 August 1991 pursuant to an order made under s. 263 of the National Land Code. I have been informed by Counsel that a sum equivalent to 10% of the purchase price had already been paid by a successful bidder and the balance of 90% was to have been paid within a certain time period. Beyond these there was no indication to show the amount involved and as to how and when the balance payment was expected to be paid - there being no document produced or exhibited.

The application for the invocation of the inherent power of the Court to stop all proceedings is, according to Counsel for the applicant, founded on an alleged irregularity of the auction sale. Firstly it was contended that the Land Administrator was wrong in fixing the reserve price at RM244,000 when the latest valuation produced by the applicant had shown a much higher valuation. Secondly it was submitted that he should have exercised his power to postpone the sale when a letter containing such a request was sent to him by the chargee.

I must say at the outset that I am left with some doubt as to the extent of power in this respect, exerciseable by this Court after the coming into effect of the Constitution (Amendment) Act 1988 (Act 704) on Article 121. Even if such jurisdiction is available, I am of the view that the applicant had failed to show any irregularity on the part of the Land Administrator. It is particularly significant in this case to note that no allegation was made as to the Administrator's failure to hold an enquiry under s. 262 of the National Land Code and neither was it suggested that the applicant had objected to his decision to fix the reserve price at RM244,000. In the absence of such averment, I must hold that such procedure under s. 262 & s. 263 had been complied with. The mere fact that the applicant had turned up to produce a report at a subsequent date showing a valuation in excess of the one fixed at the enquiry, does not to my mind negate the former valuation nor does it impose an obligation or clothe the Administrator with the power to alter the order made under s. 257(d) of the National Land Code. In any event valuation between different valuers must necessarily vary especially so when it was not stated whether the subsequent valuation was based on normal or forced sale of the land. If Administrators were expected to call off a sale each time they are confronted with the latest valuation, then no auction sale can be carried out as ordered and such sale can be detrimentally expensive to both chargor and chargee alike.

The second allegation of irregularity relates to the Administrator's power under s. 264(3) of the National Land Code which reads:

> The Collector may, if he thinks it expedient to do so, from time to time postpone any sale ordered under s. 263.

This power is clearly discretionary. Discretion, however, must be exercised judiciously. In this instance the alleged impropriety of the Administrator is his refusal to restrain the sale pursuant to a letter written by the chargee dated 31 July 1991. The curtly worded one sentence letter instructed the Administrator to withhold the sale which was to have taken place on the next day. No reason was given for such an ungracious written command. Now the statutory requirement leading to an auction sale as provided in ss. 256, 257 and 258 of the Natioinal Land Code is an elaborate and expensive procedure. It involves the computation of the amount due, the fixing of the reserve price, service of notices, appointment of auctioner and the printing and distribution of the proclamation of sale.

Such plan of action is not only confined to the participation of public officers and the parties alone but will affect those members of the public who has a right to bid at the auction. Therefore a negative answer to an attempt to call off the sale at the eleventh hour for no apparent good reason does not, to my mind, constitute an acceptable ground for saying that the Administrator had acted injudiciously. As the Administrator in this application was acting well within his discretion, I am not prepared to say that there was anything irregular about the auction sale.

Consequently even going on the assumption that inherent jurisdiction is available to stop proceedings of this nature and at this stage the circumstances of this particular application do not, in my opinion, warrant any such interference by the Court as the conduct of the sale by the Land Administrator has not been shown to be in any way irregular or unlawful.

I therefore made no order on this application.

Also found at [1992] 2 CLJ 863